

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-206501.2 **DATE:** July 30, 1982
MATTER OF: Microtech Industries Inc. -- Reconsideration

DIGEST:

Small Business Administration size standard regulations as they are applied to 8(a) program participants differ significantly from normal competitive procurements because an 8(a) firm must only meet the size standard applicable to its principal business activity and not the standard applicable to the specific procurement.

Microtech Industries, Inc. requests reconsideration of our decision, B-206501, March 2, 1982, 82-1 CPD 189, dismissing Microtech's protest against the Department of Commerce's procuring micrographic services under the Small Business Administration's (SBA) 8(a) program rather than by unrestricted competition. As explained in our decision, section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979), authorizes SBA to enter into contracts with any Government agency with procuring authority, and to arrange for the performance of such contracts by awarding subcontracts to socially and economically disadvantage small business concerns. As its basis for reconsideration, Microtech alleges that Commerce is currently negotiating with a firm, Automated Datatron, Inc., which SBA has determined to be other than small under the size standard applicable to this procurement. We affirm our prior decision since Microtech presents no legal or factual basis for revising the decision.

The protester notes that on May 19, 1980, SBA determined Automated Datatron to be other than small for the purpose of a procurement having an

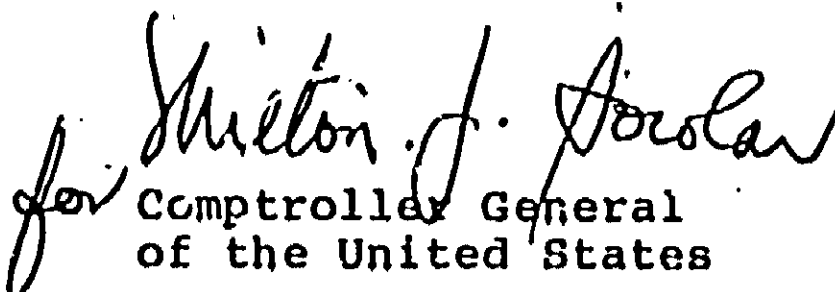
applicable size standard of two million dollars average annual receipts for the previous three years. SBA found that Automated Datatron's average annual receipts exceeded that standard, which is the standard generally applicable to the procurement of any services, including micrographic services. See 13 C.F.R. § 121.3-8(e) (1982). Under SBA regulations, a firm, after being found large, may not certify itself as a small business under the same or smaller standard until it has been recertified by SBA as a small business concern. See 13 C.F.R. § 121.3-8.

However, the size standard regulations, as they are applied to 8(a) program participants, differ significantly from normal competitive procurements. For example, to be eligible for the 8(a) program, a firm must meet only the small business size standard that applies to its principal business activity. 13 C.F.R. § 124.1-1(c)(1). In contrast, the size standards that are applied in normal procurements are those which are applicable to the specific procurement in question. 13 C.F.R. § 121.3-8. Once accepted into the program, the 8(a) concern's size status is governed by its principal business activity regardless of the size standard which would be applied for a competitive procurement. SBA has advised us that on July 8, 1981, it found that Automated Datatron does meet the size standard that applies to its principal business activity, which apparently is computer programming or data processing services, both of which have a \$4 million dollar size standard. See 13 C.F.R. § 121.3-8(e)(9) and (13). Thus, there is no legal impediment to Commerce's negotiating with Automated Datatron under current SBA regulation.

Microtech also complains that SBA utilizes a quota system to determine how many contracts should go to 8(a) concerns, and that such quotas "violate the civil rights of other small businessmen." We are not aware of any quota system, but even if such a system were in use, we point out that under section 15 U.S.C. § 637(a) the SBA may arrange for contract performance

by 8(a) concerns whenever it determines such action is necessary. Since this language gives SBA broad discretion in administering the 8(a) program, the constitutionality of the alleged quota system or its legality under civil rights statutes is a matter that is appropriate for resolution by the courts. Cf. Department of the Interior--request for advance decision, 53 Comp. Gen. 160 (1978), 78-2 CPD 432 (concerning the question of racial quotas used to promote the employment of minority contractors).

We affirm our prior decision.

for 
Comptroller General
of the United States